that?

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Ruplin - cross

- Q. Did you ask him what he was asked at these interviews?
- A. Well, I asked him to relate the nature of the investigation that was going on.
 - Q. I understand.

But when he told you that he had been interviewed by compliance people, did you ask him what it was he had been asked in these interviews?

- A. I don't know if I asked it specifically that way. But I think the idea was for him to relate to me what happened during the course of that investigation or the interviews, yes.
- Q. Did Mr. Marzano tell you at all what he was asked at the interviews?
- A. I believe he related to me that the interviews revolved around this situation of the money issue, you know, I want to say as I sit here now, that it had something to do with maybe a loan with a client or something like that. That's the best I recall of it.
- Q. You recall that what he told you was that the AEFA compliance people had raised with him something about a loan with a client?
 - A. Correct.

Ruplin - cross

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it was loans to or from, or what the exact specifics of the case. I just remembered that it had something to do with that.

- Q. If he had told you that he had made a loan to a client, is that an activity that would create a problem for Axa?
 - A. Not necessarily.
- Q. What if he had borrowed money from clients, would that have been something that would have created a problem for Axa?
 - A. Not necessarily.
- Q. What if he had been involved with loans between clients; one client making a loan to or from another?

Would that have been something that would have been a problem for Axa?

- 18 A. I guess it would depend on the nature 19 of the circumstances.
 - Q. Do you recall if he told you that he had been questioned about the signatures endorsements of clients of his on checks?
 - A. Now that you mention that, I believe that may have been discussed also, yes.
 - Q. Do you recall any more specifics than

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Ruplin - cross

Q. Do you recall, was he saying that AEFA had raised with him whether he had made a loan to a client?

- A. I believe, you know, I don't recall the exact specifics. But it had something to do, if I recall, with a loan either to or from a client.
- Q. Did you ask Mr. Marzano if he had ever made any loans to any clients?
- A. I know I asked him to explain the circumstances of whatever happened.
- Q. What did he tell you? What was his explanation if you remember?
- A. I don't remember, as we sit here today, the exact specifics of the case. You know. And what it was.
- Q. Do you recall that his explanation of this transaction sufficiently explained it insofar as you were concerned as to remove it as a question with respect to registering him with Axa?
- A. I believe that my impression was that I felt it was a satisfactory explanation. Yes.
- Q. Did he tell you that he had made any loans to any clients?
 - A. You know, I don't really recall whether

Ruplin - cross

What did he say about that?

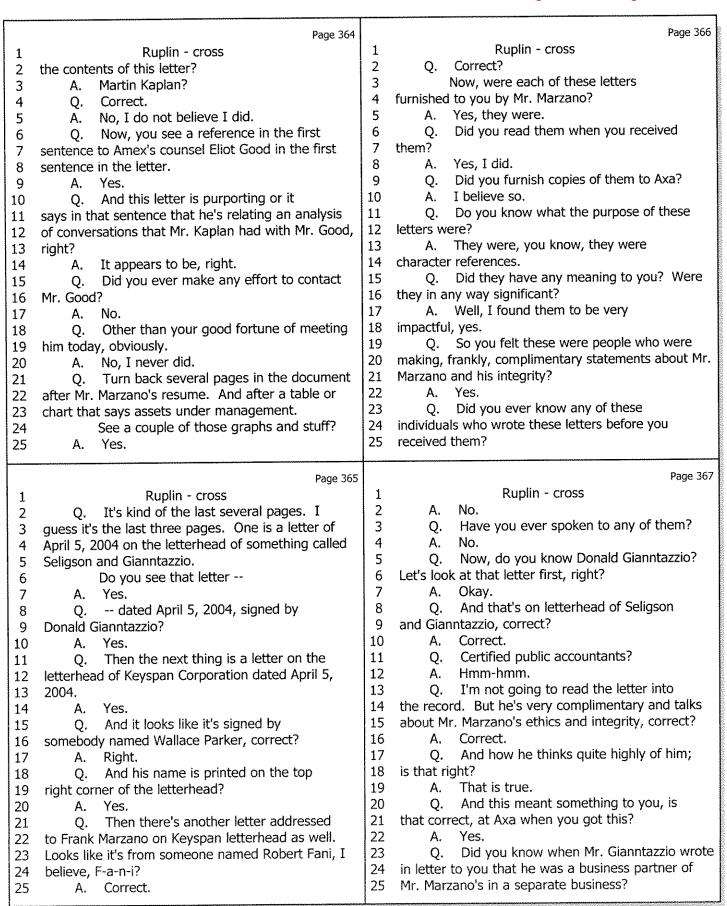
- A. You know, I do not recall any specifics of it. I didn't really remember it until you just mentioned it now.
- Q. Did he ever say to you that he had been accused of putting a client's endorsement on a check?
- A. You know, I don't really recall if that was a specific, as I say, it sounds vaguely familiar now that you bring up the issue. But I don't recall the circumstances of it.
- Q. Just so we're clear, so you don't recall the specifics of what he said to you about the signatures of clients, the endorsements on checks.
 - A. No.
- Q. About whether the specifics of what theAmerican Express people were asking him about that?
 - A. I don't recall as we sit here today,

no.

- Q. Did he ever tell you that he placed a client's signature and endorsement on a check?
 - A. No, I don't recall that.

36 (Pages 356 to 359)

Page 360 Page 362 Ruplin - cross Ruplin - cross 1 1 2 felt would shed additional light on the pending or Q. If an individual who was being 2 3 open investigation. 3 recruited indicated that they had placed a client's Q. Did you ever discuss the contents of signature as an endorsement on a check, is that 4 4 something that Axa would accept? 5 this letter with Mr. Marzano? 5 6 A. I believe so. How would that affect the recruitment 6 Q. Did you furnish a copy of this letter 7 7 process, do you think? to the home office? A. Well, I would think that if somebody 8 8 Yes. came right out and indicated that they put a 9 A. 9 signature or essentially forged a signature on any So the Axa home office would have had 10 Q. document or instrument, I would think that that 11 this letter as well; is that right? 11 would be a major problem. We would not normally 12 A. Yes. 12 You don't recall specifically pursue a candidate that would have an issue like 13 13 discussing it though with Mr. Marzano? 14 14 that. A. Well, I believe I did discuss it with Now, if you look at Respondent's 15 15 Q. Exhibit, I believe it's 5, that's the one that Mr. 16 him, yes. 16 Q. Do you recall the substance of those Campbell first showed you. 17 17 discussions? 18 18 A. Yes. Now, these are documents that Mr. 19 A. Well, as I mentioned earlier, I think 19 Q. that we spoke a number of times about the substance Marzano furnished to you; is that correct? 20 20 of the pending investigation and his response to it. 21 A. Correct. 21 Q. So this letter was part of his response 22 22 Were they unsolicited? Q. to questions you had about the substance of the In other words, had you asked him to 23 23 get any of these things for you? pending investigation; is that correct? 24 24 That's correct. A. No. I don't believe I asked him 25 A. 25 Page 361 Page 363 Ruplin - cross Ruplin - cross 1 1 specifically for these documents. I think they were Did you ever speak to Mr. Feldman? 2 2 No. Not that I recall anyway. 3 provided during the course of our conversations 3 A. O. Now, the next document is a letter 4 about the nature of the investigation that was 4 dated April 5, 2004 addressed to Mr. Marzano, 5 5 pending. 6 correct? And it's signed by an attorney named O. Well, the first, and let's go through 6 them because they don't have numbers on them. But 7 Martin Kaplan. 7 the first document appears to be a letter of April Do you see that? 8 8 5, 2004 addressed to you from an attorney named 9 A. Yes. 9 Q. On a letterhead of a firm called Gusre, Richard Feldman at a firm called Todtman, 10 10 G-u-s-r-e, Kaplan, et cetera? T-o-d-t-m-a-n, et al., let's just say for the 11 11 A. Yes. 12 record. 12 13 Do you recall, did Mr. Marzano himself Do you see that letter? 13 furnish a copy of this letter to you as opposed to 14 14 Α. Yes. you receiving it in the mail? 15 Q. Do you recall receiving that letter? 15 I ask it because it's not addressed to 16 16 Did Mr. Marzano hand you this letter or you in the first instance. 17 17 Yes. I believe that was the case. did you receive this in the mail from Mr. Feldman 18 18 directly, do you recall? 19 Did you read this letter when you got 19 Q. A. I don't recall how I received it. 20 it? 20 Q. Did you have any explanation or 21 A. Yes, I did. 21 Did you furnish a copy of this letter advanced notice that you would be receiving this 22 22 to the home office of Axa? 23 23 letter before you got it? A. I believe Mr. Marzano did indicate that 24 A. I believe so. 24 25 Did you ever speak to Mr. Kaplan about 25 he was going to be giving me information that he



	Page 368		Page 370
1	Ruplin - cross	1	Ruplin - cross
2	A. I'm not sure whether I knew that at	2	that have no basis in evidence before the
3	that time or not.	3	panel.
4	Q. Did you subsequently find that out?	4	THE CHAIRMAN: Mr. Zaretsky, you
5	A. Well, you just mentioned it now.	5	want to continue?
6	Q. I didn't tell you anything. I asked	6	MR. ZARETSKY: Did I get an
7		7	answer to the question? I don't know.
	you a question.	8	MR. CAMPBELL: Got an answer to
8	A. Well, it sounds like you were saying		
9	that.	9	the question.
10	Q. Did you have any information from any	10	Q. All right.
11	sources when you got this letter or at any time	11	Did Mr. Marzano in describing this,
12	before today that Mr. Gianntazzio was Mr. Marzano's	12	remember this loan to a client that you think he
13	business partner?	13	told you about?
14	A. I really don't recall if I did or not.	14	A. Yes.
15	Q. Would it have had any impact on you	15	Q. Did he tell you that a company that he
16	when you read this letter that was a character	16	and Mr. Gianntazzio were partners and may have been
17	reference for Mr. Marzano if you knew that this was	17	involved in this loan transaction?
	coming from Mr. Marzano's business partner?	18	MR. CAMPBELL: Objection. Again,
18	•	19	Mr. Chairman, he's got a question based on
19	A. You know, it may have. I guess it	1	
20	would depend on the situation.	20	nothing. He didn't.
21	Q. Well, let me give you this	21	MR. ZARETSKY: It's not based on
22	hypothetical: If you got this letter and you were	22	nothing.
23	seriously considering hiring Mr. Marzano and you had	23	MR. CAMPBELL: A loan to/from
24	even gotten to the point of making an offer to Mr.	24	whatever. Something to do with a loan
25	Marzano, and then you later discovered that Mr.	25	involving a client. Don't know what it was.
	7 (3.23.10)		_
	Page 369		Page 371
4	Page 369	1	Page 371 Ruplin - cross
1	Ruplin - cross	1	Ruplin - cross
2	Ruplin - cross Gianntazzio was, in fact, his business partner, and	2	Ruplin - cross And now he's building a whole hypothetical
2	Ruplin - cross Gianntazzio was, in fact, his business partner, and you discovered it through no disclosure by Mr.	2 3	Ruplin - cross And now he's building a whole hypothetical case around it that is not grounded, in fact,
2 3 4	Ruplin - cross Gianntazzio was, in fact, his business partner, and you discovered it through no disclosure by Mr. Marzano, would that have impacted the recruiting	2 3 4	Ruplin - cross And now he's building a whole hypothetical case around it that is not grounded, in fact, and asking the witness hypothetical
2	Ruplin - cross Gianntazzio was, in fact, his business partner, and you discovered it through no disclosure by Mr.	2 3 4 5	Ruplin - cross And now he's building a whole hypothetical case around it that is not grounded, in fact, and asking the witness hypothetical questions. Not relevant.
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	Page 372	4	Page 374
1	Ruplin - cross	1	to the wife and position by
2	of an entity called GM Financial?	2	refresh the witness' recollection by
3	A. It doesn't sound familiar as we sit	3	suggesting traits that may jog his memory as
4	here today.	4	to a particular headhunter.
5	MR. ZARETSKY: Just a moment, Mr.	5	Excuse me, Mr. Chairman. Okay,
6	Chairman.	6	forget it. I misunderstood.
7	I don't have any other questions,	7	Q. Is there a person who works with Axa
8	Mr. Chairman. Thank you.	8	who's in your building?
9	THE CHAIRMAN: Mr. Campbell?	9	A. Yes. I mean, there are people.
10	MR. CAMPBELL: Thank you, Mr.	10	MR. CAMPBELL: I'm not going to
11	Chairman.	11	make a lot of progress here, Mr. Chairman.
12	Mr. Ruplin, just a couple of	12	Don't worry about it. I'll drop it.
	quick follow-ups.	13	Q. Do you remember having a meeting with
13	,	14	Mr. Marzano in which he told you that he was
14	Ruplin - redirect	15	involved in an ongoing investigation while he was
15	REDIRECT EXAMINATION	16	still affiliated with American Express?
16	BY MR. CAMPBELL:	17	A. Yes.
17	Q. These meetings that you were describing	18	Q. And is that the meeting that was
18	with various people at the home office at the		arranged by the headhunter?
19	headquarters of Axa, is that something you do with	19	
20	every potential recruit?	20	'
21	MR. ZARETSKY: Mr. Chairman	21	Q. Do you recall having meetings with Mr.
22	THE CHAIRMAN: Answer the	22	Marzano after he actually separated from American
23	question, please.	23	Express?
24	A. No.	24	A. Yes.
25	 Q. Is this something that you laid on 	25	Q. Are those the meetings that you were
			Page 375
	Page 373		rage 3/3
1		1	describing in which you received the documents
2	specially for Mr. Marzano?	2	contained in Respondent's Exhibit 5?
3	A. Yes, it was.	3	
4	Q. Why did you do that?	4	A. Yes. MR. CAMPBELL: I have no further
5	A. Well, because of the nature of the	5	
6	inquiry that was pending on his NASD CRD, it	6	questions, Mr. Chairman.
7	necessitated headquarter's review and approval be in	7	MR. ZARETSKY: No questions.
8	order to move forward in the process.	8	ARBITRATOR COHEN: I have a
9	Q. Did you do it because you really wanted	9	question.
10	to affiliate him if you could?	10	MR. ZARETSKY: I'm sorry. I
11	A. Yes.	11	spoke too quickly.
12	Q. Let me see if I can jog your memory	12	RECROSS-EXAMINATION
	O' Eccilic accilia con log for moment		
ł	about a couple of things that Mr. Zaretsky asked you	13	BY MR. ZARETSKY:
13	about a couple of things that Mr. Zaretsky asked you	13 14	Q. This meeting at the home office that
13 14	about a couple of things that Mr. Zaretsky asked you about.	1	
13 14 15	about a couple of things that Mr. Zaretsky asked you about. You work with a headhunter as part of	14	Q. This meeting at the home office that
13 14 15 16	about a couple of things that Mr. Zaretsky asked you about. You work with a headhunter as part of your normal recruiting efforts?	14 15	Q. This meeting at the home office that you described that was special because of the
13 14 15 16 17	about a couple of things that Mr. Zaretsky asked you about. You work with a headhunter as part of your normal recruiting efforts? A. Yes, I have. From time to time.	14 15 16 17	Q. This meeting at the home office that you described that was special because of the inquiry A. Yes.
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	Page 376		Page 378
1	Ruplin - recross	1	Ruplin
2	A. Yes.	2	First of all, thank for your
3	Q. Did you discuss it with the individuals	3	testimony and thank you for coming today.
4	at that meeting?	4	In your experience and to your
5	A. Yes.	5	knowledge is it the obligation of the member
6	Q. Did Mr. Marzano make statements at that	6	firm to provide any additional information
7	meeting?	7	other than a U-5 and a CRD and/or both, and
8	A. Yes.	8	is other information traditionally provided
9	Q. What did he say at that meeting?	9	to you when you go back to that firm to find
10	A. I believe he reiterated the same things	10	out about the prospective employee?
11	that we discussed prior in answer to the pending or	11	THE WITNESS: Obligation, no. I
12	open investigation.	12	don't think so.
13	Q. All of the things that you've already	13	ARBITRATOR COHEN: How about
14	testified to in response to my questions to you	14	tradition in your experience?
15	about what specifics or explanation Mr. Marzano gave	15	THE WITNESS: You know,
16	you?	16	historically we've checked references in the
17	A. Correct.	17	past of prior employers. And, you know, in
18	Q. Nothing more than that?	18	most cases they decline to give very much
19	A. I don't believe so. No.	19	information, you know. But, you know, in
20	Q. Did anyone ask him any questions at the	20	some cases they have given information.
21	meeting that you recall?	21	ARBITRATOR COHEN: Okay. Thank
22	A. Yes.	22	you.
23	Q. What was he asked at the meeting?	23	THE WITNESS: You're welcome.
24	A. Questions about the nature of his	24	THE CHAIRMAN: Thank you, Mr.
25	business. Questions about the nature of the pending	25	Ruplin. Thank you very much.
			· · ·
			
	Page 377		Page 379
1	Page 377 Ruplin - recross	1	Ruplin
1	Ruplin - recross	1 2	Ruplin (Witness excused.)
2	Ruplin - recross investigation. All the things that we've been	1	Ruplin (Witness excused.) THE CHAIRMAN: Mr. Campbell, call
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2 3 4	Ruplin - recross investigation. All the things that we've been discussing.	2 3	Ruplin (Witness excused.) THE CHAIRMAN: Mr. Campbell, call
2 3 4 5	Ruplin - recross investigation. All the things that we've been discussing. Q. So all these things, those were discussed at this meeting at the home office,	2 3 4	Ruplin (Witness excused.) THE CHAIRMAN: Mr. Campbell, call your next witness, please.
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	Page 380		Page 382
1	Ruplin	1	Kundracik - direct
2	MR. CHASE: Donald Chase with	2	Denver. It was tape.
3	Morrison Cohen here in New York City, 909	3	Q. We have the luxury of both today.
4	Third Avenue, New York, New York. I am Mr.	4	If you could direct your comments
5	Kundracik's attorney.	5	generally to the panel when I ask you the questions.
6	THE CHAIRMAN: I didn't get the	6	A. Okay.
7	name of the firm.	7	Q. You don't need to be looking at me.
8	THE WITNESS: Morrison Cohen.	8	Did you meet with Mr. Marzano in the
9	THE CHAIRMAN: Very good.	9	spring of 2004?
10	ARBITRATOR COHEN: No conflict.	10	A. Yes.
11	THE CHAIRMAN: Mr. Campbell, you	11	Q. Can you tell the panel how it came
12	made proceed.	12	about that you met with Mr. Marzano?
13	MR. CAMPBELL: Thank you, Mr.	13	A. We were introduced to Frank. And there
14	Chairman.	14	was an opportunity since we were conducting a
15	DIRECT EXAMINATION	15	meeting of our reps in Philadelphia that Frank could
16	BY MR. CAMPBELL:	16	come down and visit with us from New York.
17	Q. Mr. Kundracik, with all apologies for	17	First time I met Frank was at dinner
18	the amount of time that you have been kept waiting,	18	in, excuse me, it was Philadelphia, and met for
19	I thank you for being here this afternoon.	19	dinner with Frank in Philadelphia.
20	A. You're welcome.	20	Q. Did you call him or did he call you for
21	 Q. Frank also appreciates it as well. 	21	that first meeting?
22	I'll try to keep you for as little time as possible.	22	A. I reached out to Frank a number of
23	Can you please tell the panel	23	times and never really connected with him. Our
24	THE CHAIRMAN: Can we switch	24	recruiter at that time is who connected with him and
25	seats, do you mind?	25	set up the meeting.
	Page 381		Page 383 Kundracik - direct
1	Kundracik - direct	1	
2	MR. CHASE: No.	2	Q. Who was that recruiter?
3	THE CHAIRMAN: Having you sit	3	A. Josh Hays.Q. When you say you reached out several
4	close to the witness. Just leaning around	4	Q. When you say you reached out several times, you mean before the spring of 2004?
5	you.	5	
6	THE WITNESS: I'll try to keep my	6	A. Before that meeting I had tried to get ahold of Frank. And those conversations didn't
7	head back.	7	happen. And I turned it over to Josh. And Josh is
8	THE CHAIRMAN: Thank you. I'll	8	the one who initially made contact formally.
9	appreciate that.	9 10	
10	Sorry, Mr. Campbell.	l .	Q. Over what period of time are we talking about?
11	Q. Can you tell the panel what your	11	a man a state of the state of t
12	current business affiliation is, please, Mr.	12	
13	Kundracik?	13	Q. You're not saying that you had meetings with him in the prior year or anything?
14	A. I am at present the vice president	14 15	
15	national sales manager of MultiFinancial, an ING		
16	broker-dealer headquartered in Denver.	16	Q. So can you tell me what you and Mr. Marzano discussed at that first meeting in
17	Q. What was your position in March and	17	
18	April of 2004?	18	Philadelphia? A. The opportunity at Multi, how we
19	A. Same.	19	A. The opportunity at Multi, how we operate, what resources/tools he would have
20	Q. Have you been in arbitration before?	20	available if he were to consider joining us.
21	A. Yes.	21	
22	Q. So you know that there are arbitrators,	22 23	
23	that there are opposing counsel, and the gentleman	24	A. I think we agreed to continue to have a discussion at that time.
1			
24 25	across from you is the court reporter? A. We didn't have the luxury of that in	25	Q. Did you have any information about Mr.

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Kundracik - direct

Marzano at that time?

A. I think the decision that we made then was there were three pieces that had to be addressed. We always involve Compliance and Legal. And then my function is the sales piece of it. What's available. And then after that you have discussions about what we can do to facilitate the transfer. So the next decision was the gathering of

- those teams and having individual conversations. Q. Tell me what transpired following your meeting in Philadelphia.
- A. Went back to Denver. We were, I think, genuinely excited about Frank from the standpoint of his business model. And we were looking forward to further discussions with him about affiliating.
- Q. Can you recollect when the meeting in Philadelphia actually took place?
- A. Yes. I believe it was April. I couldn't give you the exact date. It was our April regional meeting. Or it possibly could have been the first week in May. But it was in the late spring of 2004.
- Q. Do you recollect, as you sit here today, when Frank actually affiliated with

Kundracik - direct

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what we focused on is this was imminent. I can't recall whether it had happened at that point. But we needed to do further due diligence on our end, you know, to make sure we were in a situation to accommodate Frank.

- Q. Did you on your end get information about Frank's affiliation with American Express and his history in the securities business in general?
- A. Yes. I mean it's part of the process of what we do when we talk to anyone.
- Q. Tell the panel what you got and when you believe you got it if you could remember?
- A. Our process is we get an authorization to check credit and check their U-5 or U-4. That request goes in from the compliance side of the business. And Compliance takes it from there. And then they report back to us what their recommendation is, whether moving forward or stop.
 - Q. What was the report back?
- A. The recommendation from the Compliance and the Legal teams were to go ahead and proceed. We needed some additional information or they needed some additional information at that point.
 - Q. They needed additional information from

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Kundracik - direct

MultiFinancial?

- A. I couldn't give you the exact date. Within 30 days of that meeting.
- Q. So what's the next event that you were involved in that you recollect?
- A. Trying to think. From the standpoint of once Frank joined us?
 - O. No. Before Frank joined you.
- A. Oh, our process at Multi, any time we talk to a rep. Three prongs. We got together and had a meeting and discussed what's the next step from a standpoint of our ability to help, if Frank chooses to join us, in facilitating that transfer.
 - Q. Did you get information from Frank?
- A. The information that we got from Frank at that meeting was really focused around his business mix. Because each person's business create unique opportunities and challenges for us to transition somebody. So that's where my focus was at that time.
- Q. Did you learn about the circumstances under which Mr. Marzano had separated from American Express?
 - A. You know, not all the details. Now,

Kundracik - direct

whom?

A. From Frank, I believe. You know, usually if there's any issues. That's the first step, is to have a conversation.

Q. About what?

A. There was some issue that related to the nature, you know, of Frank's leaving American Express.

O. What do you mean by "the nature?"

A. What was filed apparently after he left or at the time of his departure.

Q. What was the issue as best you can recall?

MR. ZARETSKY: Objection, Mr.

Chairman. Just a foundation.

THE CHAIRMAN: Let him answer the question. You can answer the question.

- A. My understanding, again, you know, there were as it came back to me, I couldn't even really give you the exact reason. So I'd rather not comment on it at this point.
- Q. Did you see a copy of the CRD report or of Frank's U-5?
 - A. I did not.

43 (Pages 384 to 387)

Page 390 Page 388 Kundracik - direct 1 Kundracik - direct 1 MR. CAMPBELL: He said he wasn't 2 Q. Have you ever seen it? 2 actively doing it. I didn't ask him if he 3 A. I have not. 3 was actively doing it. I asked him what was 4 That's one document you don't have to 4 Q. available. And I think he's about to tell 5 5 look at. under the circumstances what he discussed. Did there come a point, well, tell me 6 6 whether or not you had discussions with Frank about THE CHAIRMAN: You can answer the 7 7 question, Mr. Kundracik. the compensation package or the transition package 8 8 A. We always listen to proposals from our that might be available to him were he to affiliate 9 9 advisors on what might be available in addition to 10 with MultiFinancial? 10 what we traditionally do. A. Okay. You know, typically the process 11 11 O. What was available? that I'm involved in is discussing various options 12 12 on the transition side. What we can/can't do now. A. At that time? 13 13 Q. At that time. Right. Today everybody's limited a little bit by resources. 14 14 A. At that point we had not. What you 15 But my focus was based on his block of business. 15 typically would do would be forgivable loans, et There were certain tools of certain things that we 16 16 cetera. And we had not done one of those since I could do for Frank after he did the things he needed 17 17 was there at that point in 2004. to do to put him in a position to transition to us. 18 18 Q. Didn't you discuss with Frank 10 Q. You told him what those things that you 19 19 percent of GDC front money? 20 could offer to him were? 20 A. In terms of a total transition package 21 A. Yes. 21 that is, it was accountable, you know, those were 22 Q. Tell the panel what they were. 22 our guidelines at that time. It wasn't structured 23 A. At that stage in the conversation, you 23 as a forgivable transaction like you see pretty know, our focus was trying to figure out if we had 24 24 regularly today. You know, just by the time you add the internal resources or if Frank needed to have 25 25 Page 391 Page 389 Kundracik - direct 1 Kundracik - direct 1 temps or temporary assets there. Discussions around up all the components, it could be that much. 2 2 Thank you. 3 who and how we might be able to help defray some of Q. 3 What package did MultiFinancial 4 those costs. 4 eventually agree with Mr. Marzano? 5 As you can imagine, when you change 5 MR. ZARETSKY: Objection, again. broker-dealers or make a switch, there's volumes of 6 6 Mr. Chairman, if he has a paperwork that need to be processed. And, you know, 7 7 foundation, the witness has a foundation for 8 there's mail costs. Things like that associated 8 knowing what that was. with it. So we discussed those issues. And taking 9 9 THE CHAIRMAN: Ask a few 10 care of E&O, possibly. You know, and possibly the 10 preliminary questions, Mr. Campbell. registration fees. The typical things that somebody 11 11 Do you have that knowledge? incurs when they transition. 12 Q. 12 Q. Was MultiFinancial in a position to 13 Yes. Α. 13 Did you negotiate that package? offer a signing bonus at that time? 14 Q. 14 Not by myself. But most them all. A. At that point in time, really from the 15 15 MR. CAMPBELL: That was a good time I got there, we weren't doing and actively 16 16 enough foundation, Mr. Chairman. seeking signing bonus arrangements. 17 17 MR. ZARETSKY: I don't think Mr.

> THE CHAIRMAN: Mr. Campbell. The question was what was the package

THE CHAIRMAN: Ask the question.

MR. CAMPBELL: Do I have to call

Campbell yet has been made the arbiter of

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24

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these things.

all five people in here?

That's not what I asked you.

Chairman. I think Mr. Kundracik just

somebody who could negotiate it and qualify for it

Was a bonus arrangement available to

MR. ZARETSKY: Objection, Mr.

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at that time?

A. We discussed --

answered that question.

	7 202		Page 394
_	Page 392	1	Kundracik - direct
1	Kundracik - direct	2	THE CHAIRMAN: Could you rephrase
2	that Mr. Marzano finally got? A. As we discussed in the first serious	3	the question.
3		4	Q. Let me repeat the question so everybody
4	meeting, it was expenses for airborne or	5	knows what it is.
5	overnighting, you know, paperwork that were	6	When you say the U-5 or not, or did he
6	particular to the transfer once the proper	7	ask someone at MultiFinancial on his behalf to get
7	arrangements were done. Support in some client		additional information from American Express with
8	meetings after the transfer occurred. E&O.	8 9	respect to any information reported on the U-5?
9	Registration fees. And that was pretty much it.	10	A. I did not.
10	Q. No signing bonus?	11	Q. Do you know if MultiFinancial did make
11	A. No signing bonus.	12	an effort to gain additional information from
12	Q. No other transition compensation	13	American Express about any information reported on
13	payments?	14	the U-5?
14	A. No. I mean, it was limited to	15	A. We have a standard process that
15	verifiable expenses associated with those efforts on	16	Compliance/Legal handles that piece. I handle mine.
16	his part.	17	Q. You're involved?
17	Q. Any enhanced payout?	18	A. I'm uninvolved.
18	A. No. Payout commensurate with his	19	MR. ZARETSKY: You are involved
19	verified gross production.	20	or not involved?
20	Q. On the grid	21	THE WITNESS: Uninvolved in that
21	A. On the grid.O. Nothing in excess of the grid?	22	process.
22		23	MR. CAMPBELL: One second, Mr.
23		24	Chairman.
24 25	Q. Now, is it true to say that your job is primarily recruiting?	25	Q. Who made the final decision that it was
23	primarily recruiting:		
	Page 393		Dana 205
	raye 333		Page 395
1	-	1	Kundracik - direct
1	Kundracik - direct	1 2	
2	Kundracik - direct A. It's probably 25 percent of what I'm		Kundracik - direct
2 3	Kundracik - direct A. It's probably 25 percent of what I'm responsible for.	2	Kundracik - direct okay to affiliate Mr. Marzano with MultiFinancial?
2 3 4	Kundracik - direct A. It's probably 25 percent of what I'm responsible for. Q. Any other aspects? What are the other	2 3	Kundracik - direct okay to affiliate Mr. Marzano with MultiFinancial? A. Our rep review team.
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2 3 4 5 6 7 8	Kundracik - direct A. It's probably 25 percent of what I'm responsible for. Q. Any other aspects? What are the other aspects of your job? A. Strategic sponsor relationships, enterprise relationships, conferences, meetings, anything that is really associated with how we can	2 3 4 5 6 7	Kundracik - direct okay to affiliate Mr. Marzano with MultiFinancial? A. Our rep review team. Q. And who's on the rep review team? A. Compliance, myself, and the president and CEO of Multi. Q. Is Mr. Ressler on that list? A. Yes. MR. CAMPBELL: No further
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1 2	***************************************	, 	
	Page 396		Page 398
	Kundracik - cross	1	Kundracik - redirect
	obviously?	2	Q. Frank asked for a bonus, didn't he, for
3	A. Yes. More or less.	3	a signing bonus?
4	Q. And you say at the time that	4	A. In discussions with me, I honestly
5	MultiFinancial was not doing signing bonuses,	5	can't recall whether he and I talked about it
6	correct?	6	specifically.
7	A. Correct.	7	MR. CAMPBELL: Okay. No further
8	Q. Not doing forgivable loans, correct?	8	questions, Mr. Chairman.
9	A. Correct.	9	ARBITRATOR COHEN: Mr. Kundracik,
10	Q. When I say not doing them, that was the	10	you are still in the same position you were
11	standard practice, was to not do that, at the time,	11	in at the time you hired Mr. Marzano?
12	correct?	12	THE WITNESS: Yes.
13	A. It was an issue of funding.	13	ARBITRATOR COHEN: That was
14	Q. Regardless of the reasons?	14	approximately a year-plus ago?
15	A. Correct.	15	THE WITNESS: Eighteen months.
16	Q. I understand that. And I appreciate	16	ARBITRATOR COHEN: Eighteen
17	you're telling us that.	17	months ago.
18	But, in fact, the result was signing	18	**
19	bonuses, forgivable loans. Those types of things	19	Mr. Marzano's production, where
20	were not being given?	20	does he stand relative to the rest of your
21	A. Correct.	20	reps, or shall I ask you how many reps you
22		22	have and then ask you the question?
23	Q. And you say it was a funding issue? A. Correct.		THE WITNESS: We have just shy of
		23	a thousand producing reps.
24 25	Q. And just so I have clarification, there	24	ARBITRATOR COHEN: Presently he
23	was some testimony here. Mr. Campbell asked you	25	stands where?
4	Page 397	۱.	Page 399
1	Kundracik - cross	1	Kundracik - redirect
3	about a 10 percent transition package or something? A. Hmm-hmm.	2	THE WITNESS: Frank is in the top
		3	five.
5	Q. Was that offered to Mr. Marzano?	4	ARBITRATOR COHEN: Thank you.
1 7	A. What we offered was what we came with		##D
1		5	MR. CAMPBELL: Want to
6	accountable expenses associated with those specific	6	renegotiate that deal now?
6 7	items.	6 7	renegotiate that deal now? MR. ZARETSKY: I think I passed
6 7 8	items. Q. Did you ever tell Mr. Marzano that	6 7 8	renegotiate that deal now? MR. ZARETSKY: I think I passed the witness.
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	Page 400		Page 402
. 1		1	Nicolosi - direct
1	witness places	2	Q. So he was a P-2 advisor?
2	witness, please. MR. CAMPBELL: Mr. Marzano calls	3	A. Everything's a P-2 advisor.
3		4	Q. Did you recruit Mr. Marzano?
4	Mr. Nicolosi.	5	A. I was involved in recruiting him. Yes.
5	THOMAS NICOLOSI, called as a		"
6	witness on behalf of the Respondent, being	6	Q. In fact, isn't part of your job at
7	first duly sworn, testified as follows:	7	Ameriprise Financial, I'll just use the new name
8	THE CHAIRMAN: Mr. Nicolosi,	8	from now on, if I occasionally slip into AEFA,
9	could you give your first and last name,	9	please understand it's just so new, part of your job
10	spell it please for the reporter and business	10	is recruitment; isn't it?
11	address?	11	A. Yes, it is.
12	THE WITNESS: Thomas Nicolosi.	12	Q. Recruiting for both the employee
13	T-h-o-m-a-s N-i-c-o-l-o-s-i. 500 Mamaroneck	13	platform and the franchisee platform?
14	Avenue, Harrison, New York 10528.	14	A. That is correct.
15	THE CHAIRMAN: You may proceed,	15	Q. When you say you run the market group,
16	Mr. Campbell.	16	explain to the panel, please, since it's a slightly
17	MR. CAMPBELL: Thank you, Mr.	17	different organization to retail brokerage, not
18	Chairman.	18	necessarily warehouse retail brokerage, what
19	DIRECT EXAMINATION	19	comprises your market group and how is it organized?
20	BY MR. CAMPBELL:	20	A. I have approximately 400 advisors
21	Q. Mr. Nicolosi, can you please state your	21	between the two platforms. I work through six field
22	current business affiliation and address?	22	vice presidents. One of my field vice presidents is
23	A. I'm with Ameriprise Financial Services	23	responsible for the P-2 platform, the franchisee
	at 500 Mamaroneck Avenue, Harrison, New York.	24	platform. And five of my field vice presidents are
24	Q. What is your current position with a	25	responsible for the employee platform.
25	O, What is your current position with a		1 Copolisible for the employee placemin
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			Page 403
	Page 401		Page 403
1	Page 401 Nicolosi - direct	1	Nicolosi - direct
1 2	Page 401 Nicolosi - direct Ameriprise Financial Services?	2	Nicolosi - direct Q. Am I right in thinking that Mr.
1	Page 401 Nicolosi - direct Ameriprise Financial Services? A. I am a group vice president.	2	Nicolosi - direct Q. Am I right in thinking that Mr. Mascielo at the time Mr. Marzano was hired was the
1 2 3 4	Page 401 Nicolosi - direct Ameriprise Financial Services? A. I am a group vice president. Q. And Ameriprise Financial Services is	2 3 4	Nicolosi - direct Q. Am I right in thinking that Mr. Mascielo at the time Mr. Marzano was hired was the FVP who was responsible for the P-2 advisors?
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4	Nicolosi - direct	1	Nicolosi - direct
1		2	I asked if you've seen one you've seen
2	Q. Have you affiliated any new franchisees	3	them all. Because they're all identical except for
3	since Mr. Marzano left?	4	the signatures?
4	A. Yes.	•	
5	Q. So you've lost some, but you've also	5	A. They're the same.
6	added some?	6	Q. Yes
7	A. Yes.	7	Some people have addenda/addendums, if
8	Q. Are you aware of the American Express	8	you want to put it that way, to their franchise
9	franchise agreement and its various addenda?	9	agreements; don't they?
10	A. I'm aware there is a franchise	10	A. Not to my knowledge.
11	agreement.	11	Q. Never heard of an addendum to a
12	Q. Well, that's 265 of your producers are	12	franchise agreement?
13	producers pursuant to such a franchise agreement,	13	A. No.
14	right?	14	Q. Never heard of addendum 3-R?
15	A. That is correct.	15	A. No.
16	Q. Would you agree with me that all of the	16	Q. Never heard of addendum 3-V?
17	top producers or on pursuant to the franchise	17	A. No.
18	agreement?	18	Q. Are you sure you run a market group at
19	A. Say that again, please.	19	Ameriprise Financial Services?
20		20	MR. ZARETSKY: Objection, Mr.
	Q. All of the top producers in your market group are franchisees?	21	Chairman.
21	A. How do you define a top producer?	22	THE CHAIRMAN: Sustained.
22		23	Q. Let me show you a couple of documents.
23		24	See if it is something that you might have
24	better producer than anybody who's an employee; is	25	recognized that you might recognize. And I hope I
25	that a good analogy?	23	recognized that you might recognize. And I hope I
	D 40F		Page 407
	Page 405	۱,	Nicolosi - direct
1	Nicolosi - direct	1 2	have them.
2	A. That is not correct.	3	
3	Q. That was a wild one.	1	When was the last time you saw a
4	Your top hundred producers, all		
5		4	franchise agreement?
	franchisees?	5	A. Don't know. I don't know.
6	A. You want an exact answer. I can't give	5 6	A. Don't know. I don't know.Q. A wild guess. Is it in the last six
6 7	A. You want an exact answer. I can't give you an exact answer.	5	A. Don't know. I don't know. Q. A wild guess. Is it in the last six months?
1	A. You want an exact answer. I can't give you an exact answer. Q. Are you telling us that you don't	5 6 7 8	A. Don't know. I don't know. Q. A wild guess. Is it in the last six months? A. No.
7	A. You want an exact answer. I can't give you an exact answer. Q. Are you telling us that you don't really know much about the franchise agreement?	5 6 7 8 9	A. Don't know. I don't know. Q. A wild guess. Is it in the last six months? A. No. Q. A year ago?
7 8	A. You want an exact answer. I can't give you an exact answer. Q. Are you telling us that you don't really know much about the franchise agreement? A. I know it exists. I'm telling you that	5 6 7 8 9	A. Don't know. I don't know. Q. A wild guess. Is it in the last six months? A. No. Q. A year ago? A. Don't recall.
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7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. You want an exact answer. I can't give you an exact answer. Q. Are you telling us that you don't really know much about the franchise agreement? A. I know it exists. I'm telling you that if you want me to quote it, I cannot do it. Q. Have you ever seen it? A. I have. Q. Did you, for example, see the franchise agreement that Mr. Marzano signed? A. Don't know if I saw his particular franchise agreement. Q. In fact, all the franchise agreements are the same; aren't they? A. To my understanding, yes. Q. Yes.	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. Don't know. I don't know. Q. A wild guess. Is it in the last six months? A. No. Q. A year ago? A. Don't recall. Q. When was the last time you affiliated a new franchisee? A. The past couple of months. Q. And you didn't see any franchise agreement in connection with that new franchisee getting him to sign it? A. No. Q. And talking to them about it? A. I'm not required to. Q. A franchise agreement is part of a uniform franchise offering circular; isn't it?
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. You want an exact answer. I can't give you an exact answer. Q. Are you telling us that you don't really know much about the franchise agreement? A. I know it exists. I'm telling you that if you want me to quote it, I cannot do it. Q. Have you ever seen it? A. I have. Q. Did you, for example, see the franchise agreement that Mr. Marzano signed? A. Don't know if I saw his particular franchise agreement. Q. In fact, all the franchise agreements are the same; aren't they? A. To my understanding, yes. Q. Yes. If you saw one, you've seen them all,	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Don't know. I don't know. Q. A wild guess. Is it in the last six months? A. No. Q. A year ago? A. Don't recall. Q. When was the last time you affiliated a new franchisee? A. The past couple of months. Q. And you didn't see any franchise agreement in connection with that new franchisee getting him to sign it? A. No. Q. And talking to them about it? A. I'm not required to. Q. A franchise agreement is part of a uniform franchise offering circular; isn't it? A. I believe so.
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7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	A. You want an exact answer. I can't give you an exact answer. Q. Are you telling us that you don't really know much about the franchise agreement? A. I know it exists. I'm telling you that if you want me to quote it, I cannot do it. Q. Have you ever seen it? A. I have. Q. Did you, for example, see the franchise agreement that Mr. Marzano signed? A. Don't know if I saw his particular franchise agreement. Q. In fact, all the franchise agreements are the same; aren't they? A. To my understanding, yes. Q. Yes. If you saw one, you've seen them all, right? A. I don't believe I saw Frank's.	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	A. Don't know. I don't know. Q. A wild guess. Is it in the last six months? A. No. Q. A year ago? A. Don't recall. Q. When was the last time you affiliated a new franchisee? A. The past couple of months. Q. And you didn't see any franchise agreement in connection with that new franchisee getting him to sign it? A. No. Q. And talking to them about it? A. I'm not required to. Q. A franchise agreement is part of a uniform franchise offering circular; isn't it? A. I believe so. Q. So one book, all bound together with spiral binding?
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. You want an exact answer. I can't give you an exact answer. Q. Are you telling us that you don't really know much about the franchise agreement? A. I know it exists. I'm telling you that if you want me to quote it, I cannot do it. Q. Have you ever seen it? A. I have. Q. Did you, for example, see the franchise agreement that Mr. Marzano signed? A. Don't know if I saw his particular franchise agreement. Q. In fact, all the franchise agreements are the same; aren't they? A. To my understanding, yes. Q. Yes. If you saw one, you've seen them all, right?	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. Don't know. I don't know. Q. A wild guess. Is it in the last six months? A. No. Q. A year ago? A. Don't recall. Q. When was the last time you affiliated a new franchisee? A. The past couple of months. Q. And you didn't see any franchise agreement in connection with that new franchisee getting him to sign it? A. No. Q. And talking to them about it? A. I'm not required to. Q. A franchise agreement is part of a uniform franchise offering circular; isn't it? A. I believe so. Q. So one book, all bound together with

	Page 408		Page 410
1	Nicolosi - direct	1	Nicolosi - direct
		2	THE CHAIRMAN: Do you know if
2	, -	3	there was a different document than the one
3	A. Yes.		before you being used.
4	Q. Let me show you a document and see if	4	
5	it refreshes your recollection about anything. It's	5	Q. Than the franchise agreement?
6	a document entitled, Addendum 3-R (Rollout)	6	A. There was a different document.
7	Restrictive Covenant Addendum. And it has a date at	7	Q. And the company decided, a sea change
8	the bottom 10/25/1999.	8	on a certain date, everybody's going to cancel all
9	Can you take a look at that?	9	the other contracts and everybody becomes either a
	MR. ZARETSKY: Let the witness	10	P-1 employee advisor or a becomes a franchisee.
10		11	Do you remember that?
11	take a look at it.	12	MR. ZARETSKY: Mr. Chairman, I
12	MR. CAMPBELL: I was going to ask		
13	him a question while he was looking at it.	13	don't want to prolong this, but he's asking
14	But let him look at it.	14	about a time period before Mr. Marzano had
15	THE CHAIRMAN: There's no	15	any affiliation with American Express. This
16	question. Let us know when you're finished	16	is a lot of stuff that I don't know how it
17	looking at it, Mr. Nicolosi.	17	has any relevance whatsoever to Mr. Marzano's
18	THE WITNESS: Okay.	18	claims.
	THE CHAIRMAN: He's ready, Mr.	19	MR. CAMPBELL: Mr. Chairman, I'm
19		20	trying to refresh the witness' recollection
20	Campbell.	ı	about the foundation document for the
21	Q. In 1999, specifically on 10/25/1999,	21	relationship between his company of which
22	were you a group vice president?	22	
23	A. Yes.	23	THE CHAIRMAN: Can you phrase
24	Q. In the same market group?	24	your question
25	A. Yes.	25	MR. CAMPBELL: 265 of his.
	Page 409		Page 411
1	Nicolosi - direct	1	Nicolosi - direct
2	Q. So you were here when the franchise	2	THE CHAIRMAN: Mr. Campbell to
	agreement was rolled out; weren't you?	3	encompass only the period of time only when
3	-	1	
4		1 4	Mr. Nicolosi worked for AEFA.
1	A. Yes.	4	Mr. Nicolosi worked for AEFA. MR. CAMPBELL: Mr. Nicolosi was
5	Q. And it was rolled out over a period of	5	MR. CAMPBELL: Mr. Nicolosi was
1		5 6	MR. CAMPBELL: Mr. Nicolosi was the GVP at the time this happened.
5	Q. And it was rolled out over a period of time in the fall of 1999 into the spring of 2000, right?	5 6 7	MR. CAMPBELL: Mr. Nicolosi was the GVP at the time this happened. THE CHAIRMAN: I thought that's
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5 6 7 8 9	Q. And it was rolled out over a period of time in the fall of 1999 into the spring of 2000, right? A. I actually don't recall. Q. Can we just try to refresh your	5 6 7 8	MR. CAMPBELL: Mr. Nicolosi was the GVP at the time this happened. THE CHAIRMAN: I thought that's what the question referred to. MR. CAMPBELL: It does. MR. ZARETSKY: He's asked him.
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	Page 412		Page 414
1	Nicolosi - direct	1	Nicolosi - direct
2	beginning of 2000, franchise agreement was being	2	given you the opportunity to question this
3	rolled out companywide; wasn't it?	3	witness about a document in existence prior
	A. Yes.	4	to the one that's going to be at issue in
4		5	this arbitration. Could you please
5	Q. It was a huge deal, wasn't it? MR. ZARETSKY: Object to the	6	MR. CAMPBELL: Same one, Mr.
6	-	7	Chairman, same one.
7	form.	8	THE CHAIRMAN: ask the
8	Q. It was a huge deal. You know it was.	9	questions in a less aggressive fashion so we
9	Didn't you have dozens of meetings	10	can get these preliminary matters out of the
10	about it, Mr. Nicolosi?		-
11	THE CHAIRMAN: Mr. Campbell.	11	way. MR. CAMPBELL: Just so you
12	MR. ZARETSKY: Object.	12	understand, Mr. Chairman, he testified that
13	THE CHAIRMAN: Mr. Campbell.	13	· · · · · · · · · · · · · · · · · · ·
14	MR. CAMPBELL: Mr. Chairman.	14	all the franchise agreements are the same.
15	THE CHAIRMAN: Start with	15	Frank Marzano signed exactly the same
16	something preliminary. You don't need to be	16	franchise agreement. This is just a part of
17	argumentative at this point.	17	the package which he also testified is one
18	MR. CAMPBELL: Mr. Chairman, I am	18	package. Everything is together in one set.
19	amazed that this man who's been a group vice	19	Same package that Frank Marzano signed. But
20	president for years, including at the time	20	this is a different part of the package to
21	when the biggest change this company had gone	21	the one that's actually in issue here. But
22	through in a hundred years took place, that	22	it's related to the issues.
23	he claims to have no knowledge whatsoever	23	MR. ZARETSKY: You just keep
24	about the key foundation document pursuant to	24	saying what Mr. Nicolosi testified to. The
25	which most of his market group operates.	25	record's going to say that. And he's
	Page 413		Page 415
1	Nicolosi - direct	1	Nicolosi - direct
2	And as a result, I'm trying,	2	mischaracterizing it. Let him ask the
3	albeit maybe a little aggressively, and I'll	3	question which I know the panel, the Chairman
4	tone that down a bit, to refresh his	4	has directed him to do.
5	recollection so that maybe we can get a	5	MR. CAMPBELL: The record will
6	glimmer that maybe this guy who was a GVP in	6	reflect that he testified there's one
7	one of the biggest market groups in the	7	franchise agreement. It's in one package,
8	country, actually paid attention to his	8	all bound together. That's not a
9	business.	9	mischaracterization.
10	MR. ZARETSKY: Mr. Chairman, I	10	THE CHAIRMAN: Mr. Campbell.
11	need to jump in. I'm sorry. And I see from	11	ARBITRATOR COHEN: Continue, Mr.
12	the Chairman, I don't want to interrupt you,	12	Campbell, please.
13	but, perhaps Mr. Campbell's threshold for	13	MR. CAMPBELL: Yes, Mr. Cohen.
14	amazement is low. I don't know really where	14	Q. Mr. Nicolosi, would you agree that the
15	it is on that scale. But he's now making	15	franchise agreement that Frank Marzano signed would
16	statements that Mr. Nicolosi never testified	16	be the same franchise agreement that everyone else
17	to.	17	signed?
18	THE CHAIRMAN: Thank you.	18	A. Yes.
19	MR. ZARETSKY: He asked a	19	Q. And it was in the same package, all
20	question: Is it a huge deal. That's not a	20	bound together with a uniform franchise offering
21	proper question.	21	circular?
22	THE CHAIRMAN: Mr. Campbell, Mr.	22	A. I would assume so.
] & A		23	Q. Tell me, as best you can recall, what's
23	Campbell.	1	· · · · · · · · · · · · · · · · · · ·
	Campbell. MR. CAMPBELL: Yes, Mr. Chairman.	24	in that package of papers that is part of what Mr.
23		1	· · · · · · · · · · · · · · · · · · ·

Nicolosi - direct Q. Let me direct your attention to a piece of Addendum 3-R. MR. CAMPBELL: Mr. Chairman, I Just brought the pieces. I have the entire MR. Camer of the direct your attention to a piece of Addendum 3-R. MR. CAMPBELL: Mr. Chairman, I Just brought the pieces. I have the entire franchise agreement. I only have one copy. Nicolosi - direct Nicolosi - direct I didn't bring it. Ill is but if you don't need, I didn't bring it all. But if you don't need, I didn't bring it all. But if you don't need, I didn't bring it all. But if you don't need, I didn't bring it all. But if you don't need, I didn't bring it all. But if you don't need, I didn't bring it, Ill is available. I fire any interrupt it does. Q. Does it contain a franchise agreement? A. Yes. Q. Does it contain a franchise agreement? A. Yes. Q. Does it contain a franchise agreement? A. Yes. Q. Does it contain a franchise agreement? A. Yes. Q. Does it contain a franchise agreement? A. Yes. Q. Well, you've been working with this agreement for years. You've got 255 people who have signed it. Marzano signed it. Every time you recruit somebody ARBITRATOR COHEN: Mr. Campbell, if I may interrupt, Mr. Nicolosi is not on NR. CAMPBELL: It's not my job to give him the benefit of the doubt, Mr. Cohen. You may do that. My job is to chellenge the bounds. And I will try to keep it in the bounds that the panel expects. Q. Have you heard of an addendum pusuant to which advisors are permitted to leave American Express if they have six years or more seniority with the firm, and to retain copies of their client documents, assuming thy wine the more than six years, they can leave. An there's a certain addendum that addresses that? A. I don't know what you call it. But I 2				
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	Page 420		Page 422
1	Nicolosi - direct	1	Nicolosi - direct
2	restrictive covenant, if advisor timely and	2	subsection 3, correct?
		3	A. I don't know that.
3	fully complies with the following	4	Q. You don't know that?
4	conditions."	5	
5	You see that?		
6	A. Hmm-hmm.	6	Q. So they may not have been. You're
7	THE CHAIRMAN: You have to answer	7	simply unaware; is that right?
8	yes or no for the record.	8	A. I'm not aware of that.
9	A. Yes.	9	Q. Are you aware whether or not American
10	Q. And if you look at number 2(a) under	10	Express has lived up to its obligation to permit
11	paragraph C, length of service, "have served at	11	franchisees who qualify for Addendum 3-R to retain
12	least six consecutive years."	12	copies under the conditions imposed by Addendum 3-R?
13	Do you see that?	13	MR, ZARETSKY: Object to the form
14	A. Yes.	14	of the question. In the sense that he said
1		15	"lived up to its obligation," he's
15	Q. Having reviewed the exhibit and the	16	characterizing what he believes the
16	items that I've directed your attention to, does		
17	this refresh your recollection that this is the	17	obligation to be. Mr. Campbell is. And I
18	addendum that addresses the outside the six-year	18	think there's no foundation for that
19	provision that you were describing earlier?	19	question.
20	A. This appears to be a copy of that.	20	MR. CAMPBELL: I'll withdraw it
21	Yes.	21	because I can see how it might be confusing.
22	Q. Now, if I can have you turn to the	22	THE CHAIRMAN: Thank you.
23	second page, No. 42 at the bottom from the section	23	Q. Mr. Nicolosi, how many advisors have
24	numbered 3.	24	left in let's say since Mr. Marzano resigned in your
25	A. Hmm-hmm.	25	market group, 40?
23	A. 1111111711111111111111111111111111111		,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
1	Page 421		Page 423
,	Page 421	1	Page 423 Nicolosi - direct
1	Nicolosi - direct	1	Nicolosi - direct
2	Nicolosi - direct Q. Second paragraph:	2	Nicolosi - direct A. I couldn't give you an exact number.
3	Nicolosi - direct Q. Second paragraph: "To the extent consistent with privacy	2 3	Nicolosi - direct A. I couldn't give you an exact number. Q. Give me your best estimate. 30?
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2 3 4	Nicolosi - direct Q. Second paragraph: "To the extent consistent with privacy laws and policies in order to allow advisors to serving portable products and to fulfill compliance duties, advisor may retain copies	2 3 4 5 6	Nicolosi - direct A. I couldn't give you an exact number. Q. Give me your best estimate. 30? A. I'd have to think it through. Q. Please think. A. Say, probably close to 30.
2 3 4 5	Nicolosi - direct Q. Second paragraph: "To the extent consistent with privacy laws and policies in order to allow advisors to serving portable products and to fulfill compliance duties, advisor may retain copies	2 3 4 5	Nicolosi - direct A. I couldn't give you an exact number. Q. Give me your best estimate. 30? A. I'd have to think it through. Q. Please think. A. Say, probably close to 30. Q. Did any of them have lengths of service
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2 3 4 5 6 7 8	Nicolosi - direct Q. Second paragraph: "To the extent consistent with privacy laws and policies in order to allow advisors to serving portable products and to fulfill compliance duties, advisor may retain copies of" Then it goes on to list statements,	2 3 4 5 6 7	Nicolosi - direct A. I couldn't give you an exact number. Q. Give me your best estimate. 30? A. I'd have to think it through. Q. Please think. A. Say, probably close to 30. Q. Did any of them have lengths of service
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	}	But that's not the point. If	25	We tried to nut these documents

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	Page 428		Page 430
1	Nicolosi - direct	1	Nicolosi - direct
2	in the first time around. It was ruled that	2	this stage of the proceeding I haven't heard
3	they couldn't be put in then, or partly,	3	how these are relevant. And we would
4	because Mr. Nicolosi was on the telephone and	4	continue to maintain this objection.
5	couldn't look at any documents that we were	5	MR. CAMPBELL: You heard what I
6	presenting him. But also because we were	6	said. I did not say that American Express
7	limiting ourselves to a very narrow set of	7	breached these addenda. Because as I said,
8	issues during this first three days.	8	Frank didn't sign these addenda.
9	American Express' argument is	9	THE CHAIRMAN: Go ahead.
10	going to be or is that it hasn't breached any	10	ARBITRATOR COHEN: Please
11	obligation to Frank to allow him to retain	11	continue.
12	his files because he didn't have that right	12	MR. CAMPBELL: As part of its
ł		13	attempt to vacate the panel's earlier award
13	because it violated American Express policy.	14	with respect to the documents, American
14	And I'm going to demonstrate by		•
15	whatever means are available to me that, in	15	Express has presented to the District Court a
16	fact, American Express' policy was the	16	privacy policy that it claims means that it
17	opposite. It was to permit retention of	17	cannot be held responsible for failing to
18	files. And that American Express has	18	provide copies and can't be required to
19	consistedly permitted retention of files.	19	provide copies of Mr. Marzano's client
20	And the only policy that I've ever seen, and	20	records to Mr. Marzano because of its privacy
21	I'm not sure if it was ever presented to this	21	policy.
22	panel, but I know it was presented to the	22	The only privacy policy that they
23	Eastern District, was a policy that was put	23	put in is a privacy policy that was not in
24	into effect after Mr. Marzano terminated	24	effect at the time Mr. Marzano left. And as
25	about six months after. About a year from	25	a counter to that defense which they put in
		1	· · · · · · · · · · · · · · · · · · ·
	Page 429		Page 431
1	Nicolosi - direct	1	Nicolosi - direct
2	Nicolosi - direct this month. A year ago this month.	2	Nicolosi - direct already and I know is out there, and I'm
	Nicolosi - direct this month. A year ago this month. So this is the only witness that	2 3	Nicolosi - direct already and I know is out there, and I'm going to address as part of my case in chief,
2	Nicolosi - direct this month. A year ago this month.	2 3 4	Nicolosi - direct already and I know is out there, and I'm going to address as part of my case in chief, I will demonstrate that American Express, in
2 3	Nicolosi - direct this month. A year ago this month. So this is the only witness that	2 3	Nicolosi - direct already and I know is out there, and I'm going to address as part of my case in chief, I will demonstrate that American Express, in fact, permitted this, obligated itself
2 3 4	Nicolosi - direct this month. A year ago this month. So this is the only witness that I'm going to get, I believe, who was a senior	2 3 4	Nicolosi - direct already and I know is out there, and I'm going to address as part of my case in chief, I will demonstrate that American Express, in
2 3 4 5	Nicolosi - direct this month. A year ago this month. So this is the only witness that I'm going to get, I believe, who was a senior officer in the market group who deals with	2 3 4 5	Nicolosi - direct already and I know is out there, and I'm going to address as part of my case in chief, I will demonstrate that American Express, in fact, permitted this, obligated itself
2 3 4 5 6 7	Nicolosi - direct this month. A year ago this month. So this is the only witness that I'm going to get, I believe, who was a senior officer in the market group who deals with this addendum and the policies that have to	2 3 4 5 6	Nicolosi - direct already and I know is out there, and I'm going to address as part of my case in chief, I will demonstrate that American Express, in fact, permitted this, obligated itself contractually to permit this, and until last
2 3 4 5 6 7 8	Nicolosi - direct this month. A year ago this month. So this is the only witness that I'm going to get, I believe, who was a senior officer in the market group who deals with this addendum and the policies that have to be implemented by American Express in	2 3 4 5 6 7	Nicolosi - direct already and I know is out there, and I'm going to address as part of my case in chief, I will demonstrate that American Express, in fact, permitted this, obligated itself contractually to permit this, and until last September 2004, did not have a policy with
2 3 4 5 6 7	Nicolosi - direct this month. A year ago this month. So this is the only witness that I'm going to get, I believe, who was a senior officer in the market group who deals with this addendum and the policies that have to be implemented by American Express in connection with the addendum and Mr. Marzano	2 3 4 5 6 7 8	Nicolosi - direct already and I know is out there, and I'm going to address as part of my case in chief, I will demonstrate that American Express, in fact, permitted this, obligated itself contractually to permit this, and until last September 2004, did not have a policy with respect to privacy that prevented it from
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	Page 432		Page 434
1	Nicolosi - direct	1	Nicolosi - direct
2	we're no longer litigating the issue of	2	And I'm glad we cleared that up, Mr.
3	breach on that part, I drop it.	3	Chairman. I thought I still had to do
4	THE CHAIRMAN: Am I mistaken? I	4	something, but apparently I didn't.
5	thought that had been resolved last time.	5	BY MR. CAMPBELL:
6	MR. CAMPBELL: Res adjudicata,	6	Q. Now, with respect to Mr. Marzano's
7	going forward. That's fine. I'll drop it.	7	specific agreement, Mr. Nicolosi, did you have any
8	MR. ZARETSKY: So far as I	8	involvement, directly or indirectly, in negotiating
9	understand it, the panel issued a decision	9	it?
10	and a temporary injunctive hearing which is	10	A. No.
11	what, last fall, was directing American	11	Q. Did you sign it? I don't believe you
12	Express to turn over copies of client files	12	did. Mr. Mascielo signed it, correct?
13	to Mr. Marzano. That's been decided.	13	A. What are you talking about?
l .		14	to the control of the
14	With all due respect, I don't	15	*
15	know whether the panel decided there was a	16	Marzano.
16	breach of any contract by American Express.		A. My signature is not on that.
17	There's an award that says turn over copies	17	Q. Can you explain to the panel what you
18	of the client files. And that's the award	18	understand about the CPA Alliance program?
19	that we've challenged in the District Court	19	A. CPA Alliance program, that was an
20	because we believe it would force American	20	initiative to attract CPAs into our business as
21	Express to violate federal law. The	21	financial advisors.
22	Graham-Leach-Blyley Act.	22	Q. Was that a companywide initiative?
23	THE CHAIRMAN: To the extent the	23	A. It could have been done companywide,
24	panel do not have to go to an award	24	yes. It was available companywide.
25	MR. ZARETSKY: Understand that.	25	Q. Did you have any goals for 2004 that
			
1			
	Page 433	4	Page 435
1	Nicolosi - direct	1	Nicolosi - direct
2	Nicolosi - direct THE CHAIRMAN: I think we can	2	Nicolosi - direct involved making specific progress with respect to
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	Page 436		Page 438
1	Nicolosi - direct	1	Nicolosi - direct
		2	activities in supporting the CPA Alliance program?
2	Q. He didn't only help your market group,	i	· · · · · · · · · · · · · · · · · · ·
3	he helped other market groups too; didn't he?	3	A. I don't believe so.
4	A. Yes, he did.	4	Q. Frank, in fact, was keen to do this on
5	Q. He was in demand to go to market groups	5	his own behalf; wasn't he?
6	and give talks on the CPA Alliance program and how	6	A. Yes.
7	it could be utilized to benefit the company; isn't	7	Q. He volunteered it to a large part?
	that right?	8	A. He did.
8		ı	· · · · · · · · · · · · · · · · · · ·
9	A. He did go to other market groups and	9	Q. Do you remember a business opportunity
10	speak, yes.	10	related to PriceWaterhouseCoopers?
11	 Q. He was in demand from other market 	11	A. What specific?
12	groups; wasn't he?	12	Q. Do you recall a time when American
13	A. He was.	13	Express was engaged to provide financial planning
		14	advice to the partners of PriceWaterhouseCoopers
14	· ·	1	
15	groups; did you?	15	when PriceWaterhouseCoopers merged with another
16	MR. ZARETSKY: There are two	16	entity? Was it IBM?
17	questions pending now.	17	MR. MARZANO: When they sold IBM.
18	MR. CAMPBELL: I'm trying to help	18	Q. When they sold to IBM.
19	the witness. He seems to be confused.	19	A. I remember we had some initiative. I
	THE CHAIRMAN: One question at a	20	don't remember the specifics.
20	· · · · · · · · · · · · · · · · · · ·		·
21	time, Mr. Campbell, would help everyone.	21	Q. But it was, would you agree, a
22	Q. Did you send him out to other market	22	significant opportunity for American Express, and
23	groups to "beat the drum" for the CPA Alliance	23	for those advisors who could be part of it?
24	program?	24	A. Sure.
25	A. He did go to other market groups.	25	Q. A lot of partners at
2.7	A. He aid go to other market groups:		C
		t	
	0		Pose 420
	Page 437	4	Page 439
1	Nicolosi - direct	1	Nicolosi - direct
1 2	-	2	Nicolosi - direct PriceWaterhouseCoopers?
2	Nicolosi - direct Q. Because they asked for him or because	l	Nicolosi - direct
2 3	Nicolosi - direct Q. Because they asked for him or because you told him to go?	2	Nicolosi - direct PriceWaterhouseCoopers? A. Yes.
2 3 4	Nicolosi - direct Q. Because they asked for him or because you told him to go? A. Because they requested him.	2 3 4	Nicolosi - direct PriceWaterhouseCoopers? A. Yes. Q. A lot of wealthy people?
2 3 4 5	Nicolosi - direct Q. Because they asked for him or because you told him to go? A. Because they requested him. Q. He was in demand; wasn't he?	2 3 4 5	Nicolosi - direct PriceWaterhouseCoopers? A. Yes. Q. A lot of wealthy people? A. I would imagine.
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	Page 440		Page 442
1	Nicolosi - direct	1	Nicolosi - direct
2	On the up, who is senior to you? Who	2	same thing; 1, 2, or 3?
3	do you report to?	3	A. In the top 5.
4	A. We have a senior vice president.	4	Q. And the company tracks advisors
5	Q. Who is that for your market group?	5	companywide ranking by production also; doesn't it?
6	A. Mike Woodward.	6	A. Yes.
7		7	Q. Do you recollect where Mr. Marzano was
	•	8	companywide in March 2004?
8	Cracciola?	9	A. He was considered one of the top
9	A. No. General sales manager.	10	advisors. I don't know what his rank was.
10	Q. Who's the general sales manager?		
11	A. Brian Heath.	11	Q. Top 50?
12	Q. And Mr. Heath reports to Mr. Cracciola;	12	A. He could have been top 50.
13	is that it?	13	Q. Would you agree that within American
14	A. That is correct.	14	Express as it was at the time that it was something
15	Q. That hasn't changed when it was called	15	of a record for an advisor to join as a newcomer to
16	AEFA, by the sounds of it?	16	the business and in four years become a top 50
17	A. No.	17	producer?
18	Q. I may have asked you this the first	18	MR. ZARETSKY: Mr. Chairman, at
19	time around, but we don't have a transcript so I	19	this point I have to say, and I know we have
20	want to make sure that we have it on the record	20	time constraints, what is the relevance of
		21	whether it was a record for Mr. Marzano to
21	here.	22	become a top 50 in the company producer
22	Can you tell us, please, where in the	23	within four years?
23	rankings by production Frank Marzano stood in the	l .	THE CHAIRMAN: Mr. Campbell.
24	market group as of March 2004?	24	MR. CAMPBELL: As I think I've
25	A. He was one of our top advisors.	25	MR. CAMPDELL. AS I UMIN I VE
<u> </u>			2112
	Page 441		Page 443
1	Nicolosi - direct	1	Nicolosi - direct
2	Q. One of the top 10?	2	already explained and will be explaining more
3	A. Yes.	3	in detail when Mr. Marzano testifies, we're
4	Q. How long had he been a top 10 advisor	4	going to show that he had an upward
5	as of March 2004?	5	trajectory momentum that was toppled in 2004
6	A. I don't remember.	6	because of the breaches by American Express.
7	Q. Do you know what his standing was in	7	And is part of the measure of damages.
		8	THE CHAIRMAN: Go ahead, Mr.
8	2003?	9	Campbell.
9	A. I don't remember his exact standing.	10	THE WITNESS: Could you rephrase
10	No.		the question.
11	Q. But you do know that he joined American	11	
12	Express in the year 2000?	12	Q. It's something of a record at American
13	A. Hmm-hmm.	13	Express for a new advisor, new to the business,
14	Q. By the year 2004 he was one of the top	14	within four years to become a top 50 nationwide
15	10 advisors in your market group?	15	producer?
16	A. Yes.	16	 A. I don't know if it was a record. But
17	Q. In American Express as a whole, where	17	it was a great accomplishment.
18	does your marketing group rank by production/GDC?	18	Q. The CPA Alliance, was that closed down?
19	A. Currently?	19	A. That is, as of right now, shut down,
E .		20	yes.
20	•	21	Q. Was it shut down shortly after Mr.
21	A. We were 1, 2, or 3.	22	Marzano separated?
22	Q. You were either number 1 or number 2,	1	and the second s
1	or number 3?	23	
23		~ 4	
23 24	A. Yes.	24	prior to or after. I'm not sure of the time line.
23		24 25	But it was in that

	Page 444		Page 446
1	Nicolosi - direct	1	Nicolosi - direct
2	Q. General time period?	2	A. Yes.
3	A. General time period. Might have been	3	Q. When did you become aware?
4	before. I'm not sure.	4	A. My recollection is sometime in March
5	Q. Let's see if I brought it.	5	of that year.
6	Would you agree, Mr. Nicolosi, that the	6	Q. Do you have a specific date or event in
7	client files created by an advisor as part of his	7	mind that led to you becoming aware?
8	financial planning practice are an important tool	8	A. I don't know the exact date.
9	for use in servicing the clients?	9	Q. Did you get anything in writing
10	A. Yes.	10	informing you?
11	Q. Would you agree that if you didn't, for	11	A. I don't believe so.
12	example, you as a market group vice president after	12	Q. Did you have any role in connection
13	an advisor leaves and you had the task of ensuring	13	with that investigation?
14	that the clients were properly serviced following	14	MR. ZARETSKY: Object to the
15	the advisor's termination, that you would be	15	form. I think he asked the question
16	significantly hampered in your ability to do that if	16 17	originally, internal review.
17	you didn't have the client files? A. I would want the client files.	18	MR. CAMPBELL: I apologize if I slip from one to the other.
18 19		19	Q. I mean to reference, Mr. Nicolosi, the
20	Q. Say again?A. I would want the client filings.	20	internal review that you described.
21	Q. In fact, wouldn't you agree that you	21	A. That I described?
22	would need the client files in order to ensure that	22	Q. Well, that I described and you agreed
23	the clients are properly serviced?	23	that you became aware of.
24	A. Yes.	24	A. Okay.
25	Q. American Express requires advisors to	25	Q. Did you get anything in writing
	Page 445		Page 447
1	Nicolosi - direct	1	Nicolosi - direct
2	maintain comprehensive files on their clients; don't	2	informing you that an internal review was initiated? A. Not to my recollection.
3	they? A. Yes.	4	Q. Can you tell us how you became aware
5	Q. All the notes of meetings are required	5	that the internal review had been initiated?
6	to be retained in the files?	6	A. My recollection
7	A. Yes.	7	•
8			MR. ZAKETSKT, THE IUST GOIDG TO
. 0	O. All the communications back and forth		MR. ZARETSKY: I'm just going to object. Mr. Chairman. Or note that I would
_	Q. All the communications back and forth between the clients and the advisor are required to	8	object, Mr. Chairman. Or note that I would like the witness to be admonished that to the
9	Q. All the communications back and forth between the clients and the advisor are required to be maintained in the file?	8	object, Mr. Chairman. Or note that I would
9	between the clients and the advisor are required to	8 9	object, Mr. Chairman. Or note that I would like the witness to be admonished that to the
9 10	between the clients and the advisor are required to be maintained in the file?	8 9 10	object, Mr. Chairman. Or note that I would like the witness to be admonished that to the extent that it night require him to disclose
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9 10 11 12	between the clients and the advisor are required to be maintained in the file? A. Yes. Q. Financial plans are required to be	8 9 10 11 12	object, Mr. Chairman. Or note that I would like the witness to be admonished that to the extent that it night require him to disclose matters that we've been discussing obviously before Mr. Nicolosi got here that implicated
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	Page 448		Page 450
1	Nicolosi - direct	1	Nicolosi - direct
2	A. Through a phone call.	2	Q. With respect to these OSJs, what was
3	Q. From who?	3	the arrangement pursuant to which, for example, Mr.
4	A. My recollection is Tim Dodds.	4	Marzano was supervised by such a registered
5	Q. In the home office?	5	principal?
6	A. Hmm-hmm.	6	A. What do you mean by that?
7	Q. Had there been prior to this date in	7	Q. Was there an arrangement? Did you
8	March, whatever date it was, had there been any	8	assign an OSJ to Frank? Did Frank pick his own OSJ?
9	other internal review of Mr. Marzano?	9	How did it work?
10	A. Not to my recollection.	10	A. We approved who the registered
11	Q. Are you aware of any compliance issues	11	principals are. And then the advisor contracts
12	relating to Mr. Marzano before you got notice that	12	either with the market group who would work for the
13	an internal review had been initiated?	13	market group as an employee in the company or the
14	A. Compliance issues?	14	independent registered principal.
15		15	Q. So you approved a group of people to be
E		16	the registered principals in the market group. Some
16	A. There was an issue related to some corporation that he had.	17	employees, some franchisees. Then the franchisee
17	·	18	gets to choose from among those people who to
18	Q. His CPA practice?	19	contract with for OSJ services; is that right?
19	A. Yes. I don't recall exactly. He had a	20	A. For the most part.
20	corporation that the company wanted him to dissolve.	21	Q. If it's a market group employee, then
21	And that was an issue that was compliance related.	22	that's something that generates income for the
22	Q. Is that the only one that you can	23	market group?
23	recollect?	24	A. Yes.
24	A. The only one that comes to mind.	25	Q. And if it's with a franchisee it
25	Q. That compliance related issue, it was	23	Q. And it it's with a franchisee it
	Page 440		Page 451
1	Page 449	1	Page 451 Nicolosi - direct
1	Nicolosi - direct	1 2	Nicolosi - direct
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Nicolosi - direct addressed by the company and by Frank? A. In the process of. Q. You were in the process of addressing it? A. Yes. It wasn't fully resolved yet. Q. Did that particular issue result in the initiation of an internal review? A. I don't know that. Q. Well, did you initiate any internal review within the market group as opposed to being initiated from outside the market group with respect to that compliance issue with Mr. Marzano? A. I did not. Q. In March 2004, compliance at American Express is accomplished as an initial matter through Series-24 individuals who called themselves OSJs; isn't that correct? A. Registered principals. Q. Yes. And the OSJs were, tell me, were they employees of American Express? A. Some were and some were not.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Nicolosi - direct generates income for the franchisee? A. Yes. Q. Can you tell the panel, please, in 2000, well, to 2004, who was Mr. Marzano's OSJ? A. I don't know that I can recall. Q. Did he have just one OSJ during that time period, or was it more than one? A. I can't answer your question. Q. Do you know whether or not he had, for example, six OSJs in a four-year period? A. I can't answer that question. Q. You don't know? A. I don't recall. Q. If somebody keeps switching from one OSJ to another, isn't that itself a compliance issue? You have to wonder why does he keep switching? A. Could be. Q. In fact, it's something that American Express doesn't permit, isn't it; switching from one OSJ to another too frequently?

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Nicolosi - direct Sof if Frank had six or seven OSJs in a four-year period, would you agree that that would have to be something that the market group countenanced/permitted? A. We would have had to have approved that. Q. Are you aware whether or not OSJs that were contracting with Frank during the period 2000 to 2004 were resigning as OSJs, giving up the position? A. I don't recall. I don't recall. Q. Was she an OSJ for Frank during some period of time? A. I'd have to check that. Q. You don't recall? A. Yes. Q. Was she an OSJ for Frank during some period of time? A. I'd have to check that. Q. You don't recall when she started. Q. Was Mary Beth Sharkey an OSJ in 2004? A. Yes. Q. Was she an OSJ in 2003? A. I don't recall when she started. Q. How about Clarence MacMaster. Do you recall Clarence MacMaster? A. He was. Q. Do you know if he was an OSJ for Frank? A. I don't recall when she started. Q. Was he an OSJ? A. He was. Q. Do you know if he was an OSJ for Frank? A. I don't recall when she started. Q. Was he an OSJ? A. He was. Q. Do you know if he was an OSJ for Frank? A. I don't recall when she started. Q. Was he an OSJ? A. He was. Q. Do you know if he was an OSJ for Frank? A. I don't recall when she started. Q. Was he an OSJ? A. I don't recall when she started. Q. Was he an OSJ? A. I don't recall when she started. Q. Was he an OSJ? A. I don't recall when she started. Q. Was he an OSJ? A. I don't recall when she started. Q. Was he an OSJ? A. I don't recall when she started. Q. Was he an OSJ? A. I don't recall when she started. Q. Was he an OSJ? A. I don't recall when she started. Q. Was he an OSJ? A. I don't recall when she started. Q. Was he an OSJ? A. I don't recall when she started. Q. Was he an OSJ? A. I don't recall when she started. Q. Was he an OSJ? A. I don't recall when she started. Q. Was he an OSJ? A. I don't recall when she started. Q. Was he an OSJ? A. I don't recall when she started. Q. Was he an OSJ? A. I don't recall when she started. Q. Was he an OSJ? A. I don't recall when she started. Q. Was		Page 452		Page 454
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have to be something that the market group countenanced/permitted? A. We would have had to have approved that. Q. Are you aware whether or not OSJs that were contracting with Frank during the period 2000 to 2000 were resigning as OSJs, giving up the position? A. I don't recall. I don't recall. Q. Do you recall Mary Beth Sharkey? A. Yes. Q. Was she an OSJ for Frank during some period of time? A. I'd have to check that out. Q. Was she an OSJ for Frank during some period of time? A. I'd have to check that out. Q. Was Mary Beth Sharkey? A. Yes. Q. Was Mary Beth Sharkey and Started. Q. You don't recall? A. I'd have to check that out. A. Give me those names again. Q. You told us MacMaster is not. A. Right. Q. You don't recall? A. Right. Q. Was Mary Beth Sharkey and OSJ in 2004? A. Yes. Q. Was she an OSJ in 2003? A. I don't recall when she started. Q. How about Clarence MacMaster. Do you recall Clarence MacMaster? Page 453 Nicolosi - direct A. Yes. Q. Was he an OSJ? A. He was. Q. Was he an OSJ? A. He was. Q. Was he an OSJ? A. He was. Q. Was he an OSJ? A. I don't know. Q. Was he an OSJ? A. I don't know. Q. Was he an OSJ? A. I don't know. A. Memicran Express? A. Yes. Q. Was he an OSJ in 2003? Q. Was he an OSJ in 2003? Q. Was he an OSJ in 2003? Q. Was he an OSJ. A. I don't know. Q. Was he an OSJ? A. I don't know. A. Memicran Express? A. Yes. Q. And there would be a compliance audit, right? A. Yes. Q. And there would be a compliance audit would have addressed any compliance subust would have addressed any compliance audit would have addressed any compliance and the originary compliance issues and set out a scheme follow-up to see whether or not they'd be taken care of; is that right? A. Yes. Q. And there would be a compliance audit would have addressed any compliance subust would ave addressed any compliance. A recipient would be a period 2000 up the line, up the compliance line to the market group? A. Yes. Q. And the compliance audit would have addressed any compli				
5 countenanced/permitted? 6 A. We would have had to have approved that. 8 Q. Are you aware whether or not OSJs that were contracting with Frank during the period 2000 to 2004 were resigning as OSJs, giving up the 11 position? 12 A. I don't recall. I don't recall. 13 Q. Do you recall Mary Beth Sharkey? 14 A. Yes. 15 Q. Was she an OSJ for Frank during some period of time? 16 period of time? 17 A. I'd have to check that. 18 Q. You don't recall? 19 A. Right. 10 A. Right. 10 Q. Was Mary Beth Sharkey an OSJ in 2004? 11 A. Yes. 12 Q. Was she an OSJ in 2003? 12 A. Yes. 13 Q. Was she an OSJ in 2003? 14 A. Yes. 15 Q. Was she an OSJ in 2004? 16 A. Yes. 17 A. I'd have to check that. 18 Q. You don't recall? 19 A. Right. 20 Q. Was Mary Beth Sharkey an OSJ in 2004? 21 A. Yes. 22 Q. Was she an OSJ in 2003? 23 A. I don't recall when she started. 24 Q. How about Clarence MacMaster. Do you recall Clarence MacMaster? 25 Q. Do you know if he was an OSJ for Frank? 26 A. No. 27 Q. Is Mr. MacMaster still an OSJ with a Ameriprise now as it's known? 28 A. No. 29 A. No. 30 Q. How about Robert Priest. 31 A. I don't recall if Bob was an OSJ. 4 A. He was. 4 A. He was. 5 Q. How about Robert Priest. 5 Q. How about Stephen Gary, Steve Gary? 4 A. I do recall a Bob Priest. Yes. 10 Q. Do you know if he was a registered principal for us. 20 Q. Do you know if he was a registered principal for us. 21 Q. Do you know if he was a registered principal for Frank? 22 A. I don't know. 23 Q. Do you know if he was a registered principal for us. 24 Q. How about Stephen Gary, Steve Gary? 25 A. I don't know. 26 Q. Do you know if he was a registered principal for us. 27 Q. How about Stephen Gary, Steve Gary? 28 A. I do recall a Bob Priest. Yes. 29 Q. Do you know if he was a registered principal for us. 20 Q. Do you know if he was a registered principal for us. 21 Q. Do you know if he was a registered principal for us. 22 Q. How about Oslanski? 23 A. I don't know. 24 A. He is no longer with us. 25 Q. And the compliance audit would have addressed any compliance is	ŧ			- -
6 A. We would have had to have approved that. 7 that. 8 Q. Are you aware whether or not OSIs that were contracting with Frank during the period 2000 to 2000 were resigning as OSIs, giving up the position? A. I don't recall. I don't recall. C. Do you recall Mary Beth Sharkey? A. Yes. C. Was she an OSI for Frank during some period of time? A. I dhave to check that the position? A. I don't recall. I don't recall. C. Was she an OSI for Frank during some period of time? A. I dhave to check that. C. You don't recall. C. Was she an OSI for Frank during some period of time? A. I dhave to check that. C. You don't recall. C. Was she an OSI for Frank during some period of time? A. I dhave to check that. C. You don't recall. C. Was she an OSI for Frank during some period of time? A. I dhave to check that. C. Was she an OSI for Frank during some period of time? A. I don't recall. C. Was she an OSI for Frank during some period of time? A. I don't recall. C. Was she an OSI for Frank during some period of time? A. A she is. C. Was she an OSI for Frank during some period of time? A. Right. C. You don't recall when she started. C. You tool recall a Bob Priest. C. Was she an OSI in 2003? A. I don't recall if Bob was an OSI. C. Was she an OSI? A. I don't know. C. How about Stephen Gary, Steve Gary? A. Yes. C. Was dary beth Sharkey an OSI with a Ameriprise now as it's known? A. No. C. How about Stephen Gary, Steve Gary? A. I don't recall a Bob Priest. Yes. C. How about Stephen Gary, Steve Gary? A. I don't recall a Bob Priest. You don't recall a	E .			
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	Page 456		Page 458
1	Nicolosi - direct	1	Nicolosi - direct
2	office that related in compliance issues that had to	2	trying to identify the scope, to the extent I
3	go up the line to the market group?	3	can, without going beyond the bounds where
4	A. No.	4	I've been told I can't go.
5	Q. Now, let's get back to the internal	5	Q. Did you have communications with Frank
	· · · · · · · · · · · · · · · · · · ·	6	about the internal review?
6	review.	7	A. When you say did I have communications,
7	Were you a part of the team undertaking		to what respect?
8	the internal review that you learned about sometime	8	
9	in March of 2004?	9	Q. With respect to the internal review.
10	A. No.	10	A. The content?
11	 Q. Was anybody from the market group or on 	11	Q. Just did you have communications with
12	your behalf a part of that team?	12	Frank?
13	A. No.	13	A. Did I speak to Frank? I did speak to
14	Q. You say there was no representative of	14	Frank.
15	the market group involved?	15	Q. About what did you speak to Frank in
16	A. To my recollection, no.	16	connection with the internal review?
17	Q. Was Mary Beth Sharkey involved in any	17	A. That he had to make himself available.
	way in the internal review?	18	Q. Well, you're the person who told him
18		19	initially that he had to turn up to a meeting?
19	A. I don't know what her role I don't	1	
20	know if she was or not.	20	
21	Q. Do you know if she was a subject of the	21	Q. Tell the panel what you told him and
22	internal review since it involved one of her	22	what Frank said to you during that conversation when
23	franchisees?	23	you first told him that he had to turn up for a
24	MR. ZARETSKY: Objection. I	24	meeting.
25	think to the extent the internal review	25	 A. I have no recollection.
	Page 457		Page 459
1	Page 457	1	Page 459 Nicolosi - direct
1	Nicolosi - direct	1 2	Nicolosi - direct
2	Nicolosi - direct encompasses this issue we've been addressing,	2	Nicolosi - direct THE CHAIRMAN: I'm sorry, I can't
2	Nicolosi - direct encompasses this issue we've been addressing, to disclose subjects of it could be violating	2 3	Nicolosi - direct THE CHAIRMAN: I'm sorry, I can't hear you.
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	Page 460		Page 462
4	Nicolosi - direct	1	Nicolosi - direct
1 2	Mr. Nicolosi's state of mind at the time?	2	another meeting.
	MR, CAMPBELL: I want to know	3	Q. So it wasn't required?
3		4	A. It was required.
4	what he meant. THE CHAIRMAN: State of mind, is	5	MR. CAMPBELL: Okay. I guess
5		6	that's as far as I'll get on that one.
6	that what you're saying, Mr. Campbell? MR. CAMPBELL: What he meant.	7	Q. Tell him anything else?
7		8	A. I don't recall.
8	What did he mean when he said it was	9	Q. Tell him it was confidential?
9	mandatory.	10	A. Probably.
10	THE CHAIRMAN: Go ahead, Mr.	11	· · · · · · · · · · · · · · · · · · ·
11	Nicolosi.		
12	THE WITNESS: You want me to	12	to discuss it with anybody?
13	answer?	13	A. Probably.
14	MR. ZARETSKY: If you can.	14	Q. You didn't just have this conversation
15	A. What I meant, it was a	15	with Frank Marzano; did you?
16	compliance-related issue. And he was required to	16	You had it with about a dozen other
17	show up.	17	people?
18	Q. Did you tell him there will be any	18	MR. ZARETSKY: Objection. The
19	consequences?	19	conversation in which Mr. Marzano was a
20	A. I don't recall.	20	party?
21	Q. If he had not turned up, what did you	21	MR. CAMPBELL: No. The
22	believe or intend would happen once you told him	22	conversation where you called up advisors
23	that it was a mandatory meeting?	23	during the same period of time in March 2004
24	A. What do I speculate would have	24	and told them you have to turn up to a
25	happened?	25	compliance meeting. It's mandatory.
<u></u>			
	Page 461		Page 463
1		1	Page 463 Nicolosi - direct
1 2	Nicolosi - direct	1 2	
2	Nicolosi - direct Q. Well, would anything have happened as	1	Nicolosi - direct
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	Page 464		Page 466
1	Nicolosi - direct	1	Nicolosi - direct
2	mandatory compliance meeting, they were all	2	Q. And you wouldn't tell him anything
3	Italians; weren't they?	3	else?
4	MR. ZARETSKY: Objection. Mr.	4	A. No.
5	Chairman, what's the relevance in that?	5	Q. Was there an issue of failure to
6	THE CHAIRMAN: Mr. Campbell, I	6	supervise in the internal review?
7	don't remember seeing anything like that in	7	MR. ZARETSKY: Can I just have a
8	the pleadings.	8	moment, please.
9	•	9	THE CHAIRMAN: Sure.
	Are you now raising a different		
10	cause of action?	10	MR. ZARETSKY: Mr. Chairman, I'm
11	MR. CAMPBELL: I can't remember	11	sorry, I just wanted to double-check the
12	if it's there. But I think we did mention	12	FinCEN article and the letter because I
13	that only people of Italian surnames were	13	didn't want to invade that.
14	involved.	14	Can I have the question read
15	THE CHAIRMAN: I have to review	15	back. I don't think it's objectionable. I
16	the pleadings. I just don't remember that.	16	want to just hear it again.
17	MR. CAMPBELL: Can I still have	17	(Question read.)
18	an answer to the question?	18	 They did review the supervision.
19	THE CHAIRMAN: No.	19	Q. Ultimately, are you the person
20	MR. ZARETSKY: I don't think I	20	ultimately responsible for compliance in your market
21	can permit that to be answered, Mr. Chairman.	21	group?
22	MR. CAMPBELL: Everybody was	22	A. Yes, I am.
23	Italian. What's wrong with that? How's that	23	Q. You're not saying that you were
24	get specific?	24	reviewed; are you?
25	MR. ZARETSKY: I would instruct	25	A. Yes, I am.
-			
	Page 465		Page 467
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2	Nicolosi - direct him not to answer.	2	Nicolosi - direct Q. Can you recollect how many
2 3	Nicolosi - direct him not to answer. THE CHAIRMAN: Mr. Chairman, you		Nicolosi - direct Q. Can you recollect how many conversations you had with Mr. Marzano between that
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9 that there was or there wasn't. Just 9 room?				
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16 may, Mr. Campbell, we did have witnesses 16 (Whereupon, the witness left the	E .		B	
17 yesterday testify about possible violations 17 hearing room.)	3		Ī	-
separate and apart from SARs. So I think we 18 MR. GOOD: And frankly, it hit a have managed to maneuver around that without 19 little raw nerve and was a little visceral of	£		i .	· · · · · · · · · · · · · · · · · · ·
	i		ŧ	
20 any problem. 20 a response. And I just kind of felt watching	I .		ı	
21 MR. CAMPBELL: Yes. The point is 21 what was going on this morning, Mr. Campbell			1	<u> </u>
there's no evidence there was a SAR. So if 22 kept placing the blame on us that we were			E .	• • •
23 it doesn't exist how can you use it as a 23 being unreasonable in our position. And I	1	· · · · · · · · · · · · · · · · · · ·	ì	-
24 shield to going into the facts of a 24 did not believe that. And I responded likely	ŧ		ŧ	•
25 conversation that he had with this guy who 25 in an inappropriate way. And I want to offer	25	conversation that he had with this guy who	23	in an inappropriate way. And I want to offer

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1	Page 472		Page 47
1	Nicolosi - direct	1	•
2	my apologies to the panel.	2	EXHIBITS
3	THE CHAIRMAN: Thank you, Mr.	3	
4	Good. I don't believe that the panel took	4	CLAIMANT'S
5	any offense to anything that happened this	5	FOR ID. DESCRIPTION PAGE
6	morning. I know I didn't.	6	1 337
7	-	7	2 354
Į.	MR. GOOD: I appreciate that.	1	2 334
8	But I think my emotions took over. And that	8	
9	was inappropriate and unprofessional.	9	
10	THE CHAIRMAN: It's an emotional	10	
11	business. Take a few-minute break while Mr.	11	
12	Cohen makes that phone call.	12	
13	(Short recess.)	13	
14	THE CHAIRMAN: We're adjourned	14	
15	for the day.	15	
16	(Time noted: 4:30 p.m.)	16	
17	•	17	
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19		19	
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1		1	
2	September 14, 2005	2	CERTIFICATE
3	τ.γ	3	
4	INDEX	4	
5	# 14 SP 54 75		
6		5	
	WITNESSES	5 6	I Robert Levine Court Reporter
1	WITNESSES	6	I, Robert Levine, Court Reporter
7		6 7	and Notary Public, hereby certify that
7 8	RESPONDENT'S DIRECT CROSS REDIRECT RECROSS	6 7 8	and Notary Public, hereby certify that the proceedings herein are from the
7 8 9	RESPONDENT'S DIRECT CROSS REDIRECT RECROSS ANTHONY MAZZEI 258 269 294 298	6 7 8 9	and Notary Public, hereby certify that the proceedings herein are from the notes taken by me in this matter of
7 8 9 10	RESPONDENT'S DIRECT CROSS REDIRECT RECROSS ANTHONY MAZZEI 258 269 294 298 FERDINAND RUPLIN 303 327 372 375	6 7 8 9	and Notary Public, hereby certify that the proceedings herein are from the notes taken by me in this matter of the aforementioned case; and that this
7 8 9 10 11	RESPONDENT'S DIRECT CROSS REDIRECT RECROSS ANTHONY MAZZEI 258 269 294 298 FERDINAND RUPLIN 303 327 372 375 RICHARD KUNDRACIK 380 395 398	6 7 8 9 10 11	and Notary Public, hereby certify that the proceedings herein are from the notes taken by me in this matter of
7 8 9 10 11 12	RESPONDENT'S DIRECT CROSS REDIRECT RECROSS ANTHONY MAZZEI 258 269 294 298 FERDINAND RUPLIN 303 327 372 375	6 7 8 9 10 11 12	and Notary Public, hereby certify that the proceedings herein are from the notes taken by me in this matter of the aforementioned case; and that this is a correct transcription of the same.
7 8 9 10 11 12 13	RESPONDENT'S DIRECT CROSS REDIRECT RECROSS ANTHONY MAZZEI 258 269 294 298 FERDINAND RUPLIN 303 327 372 375 RICHARD KUNDRACIK 380 395 398	6 7 8 9 10 11 12	and Notary Public, hereby certify that the proceedings herein are from the notes taken by me in this matter of the aforementioned case; and that this is a correct transcription of the same. IN WITNESS WHEREOF, I have
7 8 9 10 11 12 13 14	RESPONDENT'S DIRECT CROSS REDIRECT RECROSS ANTHONY MAZZEI 258 269 294 298 FERDINAND RUPLIN 303 327 372 375 RICHARD KUNDRACIK 380 395 398	6 7 8 9 10 11 12 13	and Notary Public, hereby certify that the proceedings herein are from the notes taken by me in this matter of the aforementioned case; and that this is a correct transcription of the same. IN WITNESS WHEREOF, I have Hereunto set my hand this 15th day of
7 8 9 10 11 12 13 14 15	RESPONDENT'S DIRECT CROSS REDIRECT RECROSS ANTHONY MAZZEI 258 269 294 298 FERDINAND RUPLIN 303 327 372 375 RICHARD KUNDRACIK 380 395 398 THOMAS NICOLOSI 400	6 7 8 9 10 11 12 13 14 15	and Notary Public, hereby certify that the proceedings herein are from the notes taken by me in this matter of the aforementioned case; and that this is a correct transcription of the same. IN WITNESS WHEREOF, I have
7 8 9 10 11 12 13 14 15 16	RESPONDENT'S DIRECT CROSS REDIRECT RECROSS ANTHONY MAZZEI 258 269 294 298 FERDINAND RUPLIN 303 327 372 375 RICHARD KUNDRACIK 380 395 398	6 7 8 9 10 11 12 13 14 15 16	and Notary Public, hereby certify that the proceedings herein are from the notes taken by me in this matter of the aforementioned case; and that this is a correct transcription of the same. IN WITNESS WHEREOF, I have Hereunto set my hand this 15th day of
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